

AMENDED IN ASSEMBLY APRIL 4, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2285**

**Introduced by Assembly Member Horton**

February 20, 2002

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~~An act to amend Section 308 of the Penal Code, relating to cigarettes.~~  
*An act to add Section 801.2 to the Civil Code, relating to real property.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2285, as amended, Horton. ~~Cigarettes; crimes~~ *Easements; fences and walls.*

*Existing law sets forth the burdens upon land that attach to adjoining land as easements, including the right to use a wall as a party wall. Existing law also provides for the acquisition of title to property by adverse possession by way of occupation of, and claim for, land for a continuous period of 5 years, as specified.*

*This bill would provide that the owner of residential property that is separated from adjoining property by a wall, barrier, partition, or other solid structure erected within 6 inches of the actual property line shall have a permanent easement for use of the adjoining property up to and including, the face of the wall, barrier, partition, or other solid structure, provided it was constructed by mutual consent of the existing owners or has existed for more than 5 years from the date of construction.*

*The bill would also provide that the owner of residential property that is separated from adjoining property by a single wall, barrier, partition, or other solid structure, erected within 6 inches of the actual property line, and existing for more than 5 years, may not remove the wall,*

*barrier, partition, or other solid structure without the consent of the adjoining property owner, or by order of a court based on a showing of good cause.*

~~Existing law provides that every person under 18 years of age who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, products prepared from tobacco, or any controlled substance shall, upon conviction, be punished by a fine of \$75 or 30 hours of community service work.~~

~~This bill would express the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility if available, in the area where the violation occurred or where the person resides.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1    ~~SECTION 1. Section 308 of the Penal Code is amended to~~  
2    *SECTION 1. Section 801.2 is added to the Civil Code, to read:*  
3    *801.2. (a) The owner of residential property that is separated*  
4    *from adjoining property by a wall, barrier, partition, or other solid*  
5    *structure erected within six inches of the actual property line shall*  
6    *have a permanent easement for use of the adjoining property up to*  
7    *and including, the face of the wall, barrier, partition, or other solid*  
8    *structure, provided it was constructed by mutual consent of the*  
9    *existing owners or has existed for more than five years from the*  
10    *date of construction.*  
11    *(b) The owner of residential property that is separated from*  
12    *adjoining property by a single wall, barrier, partition, or other*  
13    *solid structure, erected within six inches of the actual property line,*  
14    *and existing for more than five years, may not remove the wall,*  
15    *barrier, partition, or other solid structure without the consent of*  
16    *the adjoining property owner, or by order of a court based on a*  
17    *showing of good cause.*  
18    ~~read:~~  
19    ~~308. (a) Every person, firm, or corporation which knowingly~~  
20    ~~or under circumstances in which it has knowledge, or should~~  
21    ~~otherwise have grounds for knowledge, sells, gives, or in any way~~

1 furnishes to another person who is under the age of 18 years any  
2 tobacco, cigarette, or cigarette papers, or any other preparation of  
3 tobacco, or any other instrument or paraphernalia that is designed  
4 for the smoking or ingestion of tobacco, products prepared from  
5 tobacco, or any controlled substance, is subject to either a criminal  
6 action for a misdemeanor or to a civil action brought by a city  
7 attorney, a county counsel, or a district attorney, punishable by a  
8 fine of two hundred dollars (\$200) for the first offense, five  
9 hundred dollars (\$500) for the second offense, and one thousand  
10 dollars (\$1,000) for the third offense.

11 Notwithstanding Section 1464 or any other provision of law, 25  
12 percent of each civil and criminal penalty collected pursuant to this  
13 subdivision shall be paid to the office of the city attorney, county  
14 counsel, or district attorney, whoever is responsible for bringing  
15 the successful action, and 25 percent of each civil and criminal  
16 penalty collected pursuant to this subdivision shall be paid to the  
17 city or county for the administration and cost of the community  
18 service work component provided in subdivision (b).

19 Proof that a defendant, or his or her employee or agent,  
20 demanded, was shown, and reasonably relied upon evidence of  
21 majority shall be defense to any action brought pursuant to this  
22 subdivision. Evidence of majority of a person is a facsimile of or  
23 a reasonable likeness of a document issued by a federal, state,  
24 county, or municipal government, or subdivision or agency  
25 thereof, including, but not limited to, a motor vehicle operator's  
26 license, a registration certificate issued under the Federal Selective  
27 Service Act, or an identification card issued to a member of the  
28 Armed Forces.

29 For purposes of this section, the person liable for selling or  
30 furnishing tobacco products to minors by a tobacco vending  
31 machine shall be the person authorizing the installation or  
32 placement of the tobacco vending machine upon premises he or  
33 she manages or otherwise controls and under circumstances in  
34 which he or she has knowledge, or should otherwise have grounds  
35 for knowledge, that the tobacco vending machine will be utilized  
36 by minors.

37 (b) Every person under the age of 18 years who purchases,  
38 receives, or possesses any tobacco, cigarette, or cigarette papers,  
39 or any other preparation of tobacco, or any other instrument or  
40 paraphernalia that is designed for the smoking of tobacco,

1 products prepared from tobacco, or any controlled substance shall,  
2 upon conviction, be punished by a fine of seventy-five dollars  
3 (\$75) or 30 hours of community service work.

4 It is the intent of the Legislature that the community service  
5 requirements prescribed in this section require service at an  
6 alcohol or drug treatment program or facility if available, in the  
7 area where the violation occurred or where the person resides.

8 (c) Every person, firm, or corporation which sells, or deals in  
9 tobacco or any preparation thereof, shall post conspicuously and  
10 keep so posted in his, her, or their place of business at each point  
11 of purchase the notice required pursuant to subdivision (b) of  
12 Section 22952 of the Business and Professions Code, and any  
13 person failing to do so shall upon conviction be punished by a fine  
14 of ten dollars (\$10) for the first offense and fifty dollars (\$50) for  
15 each succeeding violation of this provision, or by imprisonment  
16 for not more than 30 days.

17 (d) For purposes of determining the liability of persons, firms,  
18 or corporations controlling franchises or business operations in  
19 multiple locations for the second and subsequent violations of this  
20 section, each individual franchise or business location shall be  
21 deemed a separate entity.

22 (e) It is the Legislature's intent to regulate the subject matter of  
23 this section. As a result, no city, county, or city and county shall  
24 adopt any ordinance or regulation inconsistent with this section.

25 (f) Notwithstanding any other provision of this section, the  
26 Director of Corrections may sell or supply tobacco and tobacco  
27 products, including cigarettes and cigarette papers, to any person  
28 confined in any institution or facility under his or her jurisdiction  
29 who has attained the age of 16 years, if the parent or guardian of  
30 the person consents thereto, and may permit smoking by the person  
31 in any institution or facility. No officer or employee of the  
32 Department of Corrections shall be considered to have violated  
33 this section by any act authorized by this subdivision.